

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RANGA G. IYENGAR,
JEFFREY L. BURMAN
and GARY E. SHERER

Appeal No. 95-4735
Application 07/826,171¹

ON BRIEF

Before MEISTER, BARRETT and WEIFFENBACH, *Administrative Patent Judges*.

WEIFFENBACH, *Administrative Patent Judge*.

¹ Application for patent filed January 24, 1992.

Appeal No. 95-4735
Application 07/826,171

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of the following design claim:

The ornamental design for a baking pan as shown and described.

The Prior Art

The following prior art references are relied upon by the examiner in support of the rejection of the claims for obviousness:

Young	2,074,448	Mar. 23, 1937
Finley	3,799,048	Mar. 26, 1974

EKCO Housewares Co. Price List, No. PL-13461 (EKCO); Cookie Sheet No. 64100M410, page 13, May 1, 1981.

The Rejection

The claim stands rejected under 35 U.S.C. § 103 as being unpatentable over EKCO in view of Finley and Young.

Opinion

The claimed subject matter is directed to the ornamental design for a shallow baking pan having a rectangular shape and including twin grip handles, each having a hole therein, with sloping sides from the top rim of the pan to the bottom of the pan. The rim of the pan is a wide flat trim

terminating in a rolled lip. See Fig. I below. A groove on the bottom surface of the pan extends from the interior thereof outwardly in rectangularly shaped convolutions of ever increasing size that generally conform in shape to the shape of the pan's outer periphery. See Fig. II below.

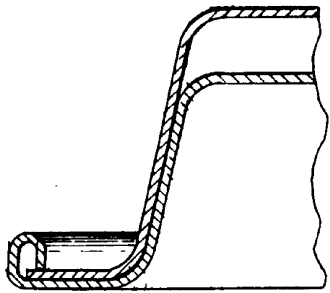


Fig. I

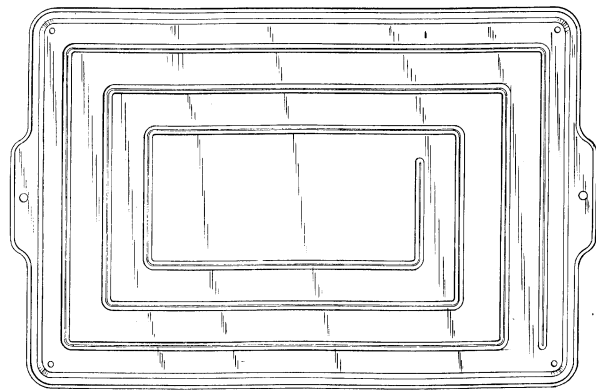


Fig. II

In order for a design to be unpatentable because of obviousness, there must be a “Rosen” disclosure, i.e., a basic design reference in the prior art, “a something in existence, the design characteristics of which are basically the same as the claimed design.” *In re Borden*, 90 F.3d 1570,

1574, 39 USPQ2d 1524, 1526 (Fed. Cir. 1996); *In re Rosen*, 673 F.2d 388, 391, 213 USPQ 347, 350 (CCPA 1982). The examiner's basic reference is EKCO. EKCO discloses a three dimensional top view of a shallow baking pan (see Fig. IV below) which has the same general appearance to Figs. 2 and 3, combined, of the top view of appellants' overall design (see Fig. III below).

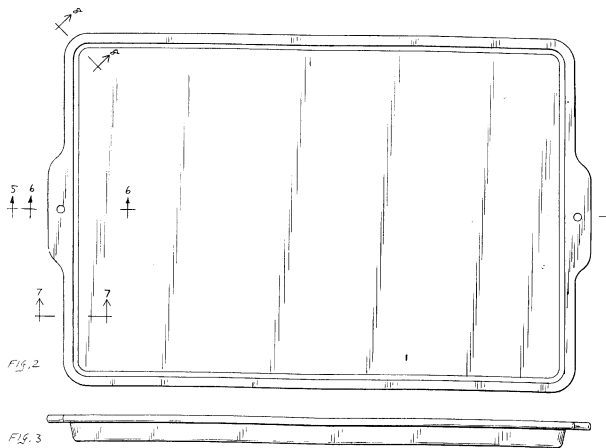


Fig. III: top and side views of appellants' pan

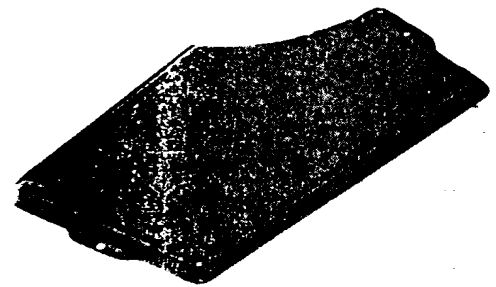


Fig. IV: the EKCO pan²

²The lower left portion of the pan was not illustrated in the reference because the reference gave a series of pictures cascading from the top of the page and the lower left corner of the pan was overlapped by the next succeeding picture in the cascade. In reproducing the illustration, the overlapping picture was deleted. We find that the partial portion of the pan illustrated in EKCO is sufficiently clear to show that the top of the pan is ornamentally the same as appellant's top view.

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The pan shown in the EKCO reference has a rectangular shape and includes twin grip handles, each having a hole therein, with sloping sides from the top rim of the pan to the bottom of the pan. The examiner concedes that the pan disclosed by EKCO does not disclose the spiral indented rib on the bottom surface of the pan or the wide flat trim terminating in a rolled lip. The examiner relies on Finley and Young, respectively, for these features.

Both Finley and Young are directed to baking pans. Finley discloses a round pan having a round spiral indented rib on the bottom surface of the pan. See Fig. V below. Finley's pan also has a narrow flat rim terminating in a rolled lip. See Fig. VI below. Young discloses a shallow pie pan having a wide flat trim terminating in a rolled lip. (see Fig. VII below).

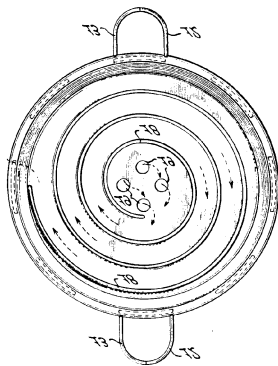


Fig. V

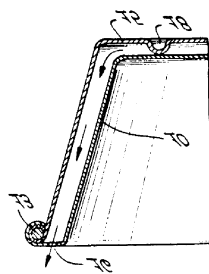


Fig. VI

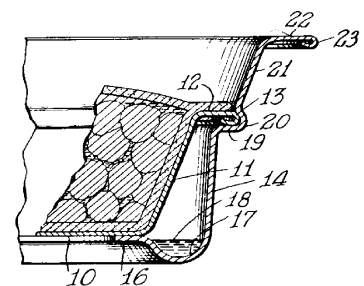


Fig. VII

The examiner made factual findings that a spiral indented rib or groove on the bottom surface of a pan and a wide flat rim on a pan terminating with a rolled lip are old and well known in the art. The examiner concluded that

it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the EKCO catalog reference with a spiral indented rib as taught by Finley and a wide flat rim terminating with a rolled lip as taught by Young. Merely changing the spiral to a rectangular spiral to conform with the chosen shape is an obvious and minor modification since if you change the shape of the pan then the spiral would also have to change.

Appellants argue that Finley's design shows features which are not within the scope of appellants' claim such as wire shaped handles (12 and 13) and openings on the top rim of the pan while "Young shows a round pan having a rolled lip" (brief: p. 7). Appellants assert that their design "is rectangular shaped and has a rectangular pathway of ever decreasing length lines which meet at substantially at a right angle as one moves from the outside of the design to the inside" and that there "is no spiral (curved) like appearance in the nature of a helix with one or more turns about an axis" (id.). Appellants equate their groove design to a maze at Hampton Court Palace in England. Appellants also argue that the prior art relied upon by the examiner provides no motivation for one to make the changes to the EKCO pan to arrive at appellants' design illustrated by Figs. 1-8. On page 8 of the brief, appellants maintain that

[i]n the present design one gets a distinctively different feeling when looking at the bottom of the pan of this design with its long outer lines taking right angle turns and getting smaller and smaller in size with the lines parallel to the pan ends being shorter than the lines parallel to the side of the pan.

No such feeling is obtained by viewing of the art cited alone or even if combined.

Accordingly, where the determination of obviousness is so subjective, the artistic impression (i.e. how one perceives the end result) is all important.

After careful consideration of the issues raised in this appeal and with the arguments of both the appellants and the examiner, we find that the rejection of the claim based upon ECKO, Finley and Young is not well founded and will not be sustained.

We do not consider ECKO as a *Rosen* reference. The pan shown in the ECKO reference does not reveal that the bottom surface of the pan has any groove or ornamental design therein. Even if we were to agree with the examiner that ECKO is a *Rosen* reference, we cannot agree that the visual appearance of the groove or indentation in the appellants' design is suggested by Finley as the examiner contends. While Finley conceptually shows a groove in the bottom surface of a pan which extends from the interior thereof outwardly in spaced convolutions of ever increasing size that conform in shape to the pan's outer periphery, the resulting configuration of the convolutions is a spiral. Such a configuration presents a significantly different appearance than the rectangularly shaped convolutions on the bottom surface of the claimed design. In our view, the examiner has

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improperly focused on Finely's concept, rather than upon the actual visual appearance which would be suggested thereby. *In re Harvey*, 12 F.3d 1061, 1064, 29 USPQ2d 1206, 1208 (Fed. Cir. 1993). Accordingly, for the foregoing reasons, the examiner's rejection under 35 U.S.C. § 103 is reversed.

REVERSED

JAMES M. MEISTER)	
Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
LEE E. BARRETT)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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CAMERON WEIFFENBACH)	
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